



## *COMMONWEALTH of VIRGINIA*

### *DEPARTMENT OF ENVIRONMENTAL QUALITY*

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Secretary of Natural Resources

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Director

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**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
NUTRI-BLEND, INC.  
FOR  
KYANITE DIXON/ BAILEY TRACT 214  
VPA Permit No. VPA03018**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Nutri-Blend, Inc., regarding the Kyanite Dixon/Bailey Tract 214 for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Biosolids" means a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and 9VAC25-32-356, such that it meets the standards established for use of biosolids for land application, marketing, or distribution in

accordance with this regulation. Liquid biosolids contains less than 15% dry residue by weight. Dewatered biosolids contains 15% or more dry residue by weight.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-32-10.
6. "Land Application" means, in regard to sewage, biosolids, and industrial residuals, the distribution of treated wastewater, referred to as "effluent," stabilized sewage sludge, referred to as "biosolids," or industrial residuals by spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating into the soil with a uniform application rate for the purpose of fertilizing crops or vegetation or conditioning the soil. Sites approved for land application of biosolids in accordance with the Regulations are not to be considered to be treatment works. Bulk disposal of stabilized sludge or industrial residuals in a confined area, such as in landfills, is not land application. For the purpose of the Regulations, the use of biosolids in agricultural research and the distribution and marketing of exceptional quality biosolids are not land application. 9 VAC 25-32-10.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "Nutri-Blend" means Nutri-Blend, Inc. a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Nutri-Blend is a "person" within the meaning of Va. Code § 62.1-44.3.
9. "O&M" means operations and maintenance.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Permit" means VPA Permit No. VPA03018 which was issued under the State Water Control Law and the Regulations to Nutri-Blend on April 15, 2013 and which expires on April 14, 2023.
12. "Point source" means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged. 9 VAC 25-32-10.
13. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage from

vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by Department of Mines Minerals and Energy unless the Board determines that such injection or disposal will result in the degradation of ground or surface water resources. 9 VAC 25-32-10.

14. "Regulations" means the VPA Permit Regulations, 9 VAC 25-32-10 *et seq.*
15. "Site" means the Kyanite Dixon/Bailey Tract 214 located in Buckingham, Virginia, where Nutri-Blend, Inc. manages pollutants which are the subject of the Permit.
16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VPA" means Virginia Pollution Abatement.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Nutri-Blend is a biosolids management company which regularly transports and applies biosolids from regional wastewater treatment plants to application sites. Nutri-Blend land applied biosolids on multiple fields at the Site.
2. The Site is the subject of the Permit which allows Nutri-Blend to manage biosolids in strict compliance with the terms and conditions of the Permit.
3. On March 29, 2018, Department staff conducted an inspection at the Site for compliance with the requirements of the State Water Control Law, the Permit, and the Regulations. As part of the inspection, DEQ staff reviewed the nutrient management plan (NMP) that Nutri-Blend staff provided on-site. After the inspection, Nutri-Blend submitted an updated plan to the Virginia Department of Conservation and Recreation (DCR). DCR received the updated plan on May 19, 2018. DEQ and DCR reviewed the updated NMP. DCR staff provided DEQ with a summary of deficiencies in the updated NMP.
4. Based on the inspection and NMP review from DCR, Department staff made the following observations regarding the NMP:

- a. The crop type specified in the NMP provided during the inspection did not match the crop type and conditions in the field. The NMP specified a hay maintenance rate but the field was a row crop field that was to be planted in corn grain. The plan was not updated to show the correct crop until after the spreading occurred.
  - b. The NMP cover sheet did not include acreage of land application area by crop type.
  - c. The NMP maps did not contain field acreage.
  - d. The NMP utilized the Phosphorus Index to determine the nutrient application rates for fields 11, 12, and 12. The NMP did not specify whether these fields were no-till or tilled. The NMP did not include a copy of the RUSLE2 Profile Erosion Calculation Record.
5. Part I.C.2 of the Permit requires that a nutrient management plan be developed for each land application site prior to biosolids application. A copy of the NMP shall be present at the land application site during land application operations and available for review by DEQ staff. The NMP shall be written in accordance with the criteria stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia. Those regulations state that the nutrient management plan:
  - a. Shall contain one or more summary sheets that list expected crops or crop rotations. 4 VAC 50-85-130.D.4
  - b. Be identified by a single cover sheet indicating acreage of cropland, hay, pasture, and specialty crops included in the plan for the first year of the plan. 4 VAC 50-85-130.B.5
  - c. Contain a map or aerial photograph to identify field numbers and acreages where nutrients will be applied. 4 VAC 50-85-130.C.1.c
  - d. Contain the following information for all fields where the phosphorus applications are based on the P-index: crop tillage type for each crop stated as either no-till or tilled for all cropland and a copy of the RUSLE2 Profile Erosion Calculation Record. 4 VAC 50-85-130.F.9
6. During the March 29, 2018 inspection, DEQ observed that 4.5 loads of lime-stabilized biosolids from Piscataway Waste Water Treatment Plant (WWTP) was land applied to the back half of field 214-12 (Field 12). The soil sample in the nutrient management plan for Field 12 indicated that the pH of the field was 7.2. The NMP, appropriately, did not recommend the application of lime for Field 12; therefore, the application of lime-stabilized biosolids was not in accordance with the NMP.
7. During the March 29, 2018 inspection, DEQ staff notified Nutri-Blend field staff of the findings regarding the soil pH and application of lime-amended material. Nutri-Blend field staff stated that they misinterpreted the field boundary on the site map between 214-10 (Field 10) and Field 12. The lime treated material was intended for Field 10.

8. The soil sample for Field 10 indicated the pH of that field was 6.0 with a lime recommendation of 1.3 tons/acre.
9. The NMP did not include biosolids analysis results for the biosolids that were actually applied to Field 12.
10. The NMP Special Condition #4 requires that biosolids analysis results be used to determine actual application rates that do not exceed the nitrogen, phosphorus, and lime application rates specified in the nutrient management plan.
11. The NMP soil test summary indicates that no lime applications are recommended for Field 12.
12. Part I.C.2 of the Permit says the NMP shall be enforceable through the permit.
13. On April 13, 2018, Nutri-Blend submitted a monthly land application report that described land application activity conducted by Nutri-Blend during the month of March 2018. The report listed the types and amounts of biosolids that Nutri-Blend land applied to fields 214-10 and 214-12 on March 29, 2018. The report did not include entries indicating that Nutri-Blend applied lime-stabilized biosolids from Piscataway WWTP to Field 12, as was observed by DEQ staff during the March 29, 2018 inspection.
14. Nutri-Blend provided a certification statement signed by the Certified Land Applier present for the March 29, 2018 land application at the Site. The certification statement indicates that the applications were in compliance with the permits. The Certified Land Applier that signed the statement was present during the March 29, 2018 inspection.
15. Part I.B.2.d of the Permit requires that the permit holder submit a monthly report that identifies the source of biosolids and approximate field area receiving those biosolids.
16. Va. Code § 62.1-44.15(5a) states that a VPA permit is a “certificate” under the statute.
17. The Department has issued no permits or certificates to Nutri-Blend to operate at the Site other than VPA Permit No. VA03018.
18. On July 31, 2018, based on the inspection and follow-up information, the Department issued Notice of Violation No. W2018-07-C-0001 to Nutri-Blend for the violations described in paragraphs C3-13, above.
19. On October 2, 2018, Department staff met with representatives of Nutri-Blend to discuss the violations.
20. During the October 2, 2018 meeting, Nutri-Blend stated that it submitted a revised NMP to the Department of Conservation and Recreation on August 9, 2018 for the land application that occurred in March 2018. The revised NMP was approved by DCR on

August 15, 2018 and the approved NMP included the components that were missing during the inspection and initial review by DCR. The approved NMP did not include the 4.5 loads of lime-stabilized biosolids that were spread on Field 12.

21. Based on the results of the March 29, 2018 inspection and follow-up information, the Board concludes that Nutri-Blend has violated Permit Parts I.B.2.d and I.C.2, as described in paragraphs C(3)-(15), above.
22. On November 13, 2018 Nutri-Blend and DEQ conducted pH sampling of Field 12. The sample was split between DEQ and Nutri-Blend staff for analysis. The results of the sampling revealed a pH of 6.4 which is within the agronomic range.
23. On November 19, 2018, Nutri-Blend submitted to DCR a revised NMP which included the 4.5 loads of lime-stabilized biosolids that were applied to Field 12. On November 26, 2018, DCR approved the revised NMP.
24. On November 20, 2018, Nutri-Blend submitted a revised monthly report to DEQ. On December 5, 2018, DEQ sent Nutri-Blend a request for clarification regarding the revised monthly report. On December 14, 2018, Nutri-Blend submitted a second revised report. On December 18, 2018, DEQ notified Nutri-Blend that the revised report was not consistent with DEQ's understanding of the biosolids application at the Site.
25. In order for Nutri-Blend to return to compliance, DEQ staff and representatives of Nutri-Blend have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders Nutri-Blend and Nutri-Blend agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$2,600 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Nutri-Blend shall include its Federal Employer Identification Number (FEIN) (\_\_\_\_-\_\_\_\_) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Nutri-Blend shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Nutri-Blend for good cause shown by Nutri-Blend, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2018-07-C-0001 dated July 31, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Nutri-Blend admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Nutri-Blend consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Nutri-Blend declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Nutri-Blend to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Nutri-Blend shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God,

war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Nutri-Blend shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Nutri-Blend shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

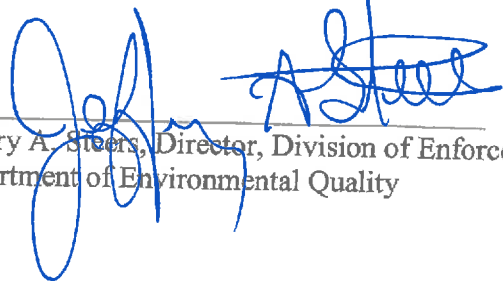
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Nutri-Blend. Nevertheless, Nutri-Blend agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Nutri-Blend has completed all of the requirements of the Order;
  - b. Nutri-Blend petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Nutri-Blend.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Nutri-Blend from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.



12. Any plans, reports, schedules or specifications attached hereto or submitted by Nutri-Blend and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Nutri-Blend certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Nutri-Blend to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Nutri-Blend.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Nutri-Blend voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7<sup>th</sup> day of MARCH, 2018

  
Jeffery A. Steers, Director, Division of Enforcement  
Department of Environmental Quality

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Nutri-Blend, Inc. voluntarily agrees to the issuance of this Order.

Date:

1/3/19

By:

David Simons VP  
(Person) (Title)  
Nutri-Blend, Inc.

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 3<sup>rd</sup> day of

January, 2019, by David Simons who is

Vice-President of Nutri-Blend, Inc. on behalf of the corporation.

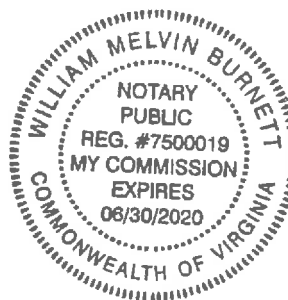
William Melvin Burnett  
Notary Public

7500019

Registration No.

My commission expires: 6/30/20

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

### **1. Monthly Report**

By January 14, 2018 Nutri-Blend shall submit a revised monthly report to DEQ which includes the application of 4.5 loads of lime-stabilized biosolids to Field 12 from Piscataway WWTP.

### **2. Sampling**

In March 2019 Nutri-Blend shall conduct a second round of pH sampling of Field 12 in coordination with DEQ staff. The sample will be split between DEQ and Nutri-Blend staff for analysis.

If the March sampling results reveal a pH of 7.5 or greater then Nutri-Blend shall submit a corrective action plan to restore the pH to the agronomic range for the crop in the field (or if no crop is planted, to the agronomic range for the next crop to be planted in the field) to DEQ for review and approval within 30 days of receipt of the sample results. The corrective action plan shall require the pH to be restored to the agronomic range for the crop no later than May 1, 2020.

### **3. Site Book**

By January 14, 2019 Nutri-Blend shall submit a revised site book for the Site to reflect actual field boundaries, and that is updated to include each of the requirements itemized in the VPA Permit Regulation, 9VAC25-32-60.F.2.d.(1) through (11) for all fields identified within the contiguous boundary of the Site. Land application shall not commence at any site identified in the revised site book until DEQ has approved the updated site book. The updated site book will replace the original site book for the Permit.

### **4. O&M Manual**

By January 14, 2019 Nutri-Blend shall update its O&M manual to include procedures to ensure that permit conditions related to the location of biosolids application and monthly reporting are followed. Nutri-Blend shall submit a copy of the procedures to DEQ within 7 days of updating the O&M manual.

### **5. DEQ Contact**

Unless otherwise specified in this Order, Nutri-Blend shall submit all requirements of Appendix A of this Order to:

Kristen Sadtler  
Water Enforcement Manager  
VA DEQ – Central Regional Office  
1111 East Main Street  
Richmond, VA 23219  
804-698-4149  
[Kristen.sadtler@deq.virginia.gov](mailto:Kristen.sadtler@deq.virginia.gov)